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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,983	03/17/2004	Thomas E. Valiulis	502440	3899
53609	7590	06/09/2006		
REINHART BOERNER VAN DEUREN P.C. 483 NORTH MULFORD ROAD SUITE 7 ROCKFORD, IL 61107			EXAMINER KING, ANITA M	
			ART UNIT	PAPER NUMBER
			3632	

DATE MAILED: 06/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/802,983

Applicant(s)

VALIULIS ET AL.

Examiner

Anita M. King

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 29-35 is/are pending in the application.
- 4a) Of the above claim(s) 5-8 and 12-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 9-11 and 29-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

This is the third office action for application number 10/802,983, Retail Display Support having Reduced Drag and Method, filed on March 17, 2004.

Election/Restrictions

Claims 5-8 and 12-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on October 28, 2005.

Cancellation of Claims

Claims 17-28 have been canceled per applicant's request.

Claim Rejections - 35 USC § 112

Claims 1-4 and 9-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is an inconsistency between the language in the preamble and certain portions in the body of the claim, thereby making the scope of the claim unclear. The preamble in claim 1 clearly indicates that a subcombination is being claimed, e.g., "an apparatus for display retail merchandise...." This language would lead the examiner to believe that the applicant intends to claim only the subcombination of "an apparatus," the retail merchandise being only functionally recited. This presents no problem as long

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as the body of the claim also refers to the retail merchandise functionally, such as, "for attachment to said retail merchandise."

The problem arises when the retail merchandise is positively recited within the body of the claim, such as, "a reduced friction layer on the support surface directly supporting and contacting the merchandise," in lines 9-10 of claim 1. There is an inconsistency within the claim; the preamble indicates subcombination, while in at least one instance in the body of the claim there is a positive recital of structure indicating that the combination of an apparatus and retail merchandise are being claimed. The examiner cannot be sure if applicant's intent is to claim merely the apparatus or the apparatus in combination with the retail merchandise.

Applicant is required to clarify what the claims are intended to be drawn to, i.e., either the apparatus alone or the combination of the apparatus and the retail merchandise. Applicant should make the language of the claim consistent with applicant's intent. In formulating a rejection on the merits, the examiner is considering that the claims are drawn to the subcombination and the claims will be rejected accordingly. If applicant indicates by amendment that the combination claim is the intention, the language in the preamble should be made consistent with the language in the body of the claims. If the intent is to claim the subcombination, then the body of the claims must be amended to remove positive recitation of the combination.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 9-11, 29 and 33-35 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,484,891 to Burke. Burke discloses an apparatus (10) for displaying retail merchandise, the apparatus adapted to be supported by a vertical support, the apparatus comprising: a retail support structure (12) having a rearward portion (18) adapted to be supported by the vertical support, the retail support structure having a support surface (60) extending horizontally, the support surface adapted to slidably support merchandise; a front stop (16) arranged proximate a front end of the support surface; self-facing means (14) for facilitating forward movement of merchandise supported on the support surface toward the front stop; a reduced friction layer (Col. 9, line 14ff) having a static coefficient of friction that is less than a static coefficient of friction for standard powder coated finish for retail shelves; the means including a spring biased pusher (90) biased toward the front stop and movable toward and away from the front stop; wherein the support surface is oriented substantially parallel with horizontal when the retail support structure is supported in a horizontal position by the vertical support; wherein the retail support structure includes a generally

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flat panel providing the support surface; and wherein the apparatus is free of an endless belt.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 2, 3, 30, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burke in view of U.S. Patent 5,242,164 to Nicoll. Burke discloses the claimed invention except for the limitation of the reduced friction layer being a fluoropolymer. Nicoll teaches a structure having a support surface (12) including a reduced friction layer, and wherein the layer is coated with a fluoropolymer. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the layer of silicon in Burke to have been a fluoropolymer as taught by Nicoll for the purpose of providing an alternative, mechanically equivalent, low coefficient of friction material for enabling an object to slide easily over the support surface.

Claims 4 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burke in view of U.S. Patent 6,218,017 to Yamashita et al., hereinafter, Yamashita. Burke discloses the claimed invention except for the limitation of the silicon material being an ultraviolet (UV) type coating. Yamashita teaches a structure having a layer of silicon ultraviolet material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the silicon material in Burke to

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have been an ultraviolet silicon material as taught by Yamashita for the purpose of providing a hard protective coating for the support surface.

Response to Arguments

Applicant's arguments with respect to claims 1-4 and 9-11 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion


Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (571) 272-6817. The examiner can normally be reached on Monday-Thursday.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Anita M. King
Primary Examiner
Art Unit 3632

June 6, 2006